Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF
CBEYOND, EARTHLINK, INTEGRA TELECOM, AND TW TELECOM

February 24, 2012

TABLE OF CONTENTS

Page

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF
CBEYOND, EARTHLINK, INTEGRA TELECOM, AND TW TELECOM

Cbeyond, Inc. ("Cbeyond"), EarthLink, Inc. ("EarthLink"), Integra Telecom, Inc. ("Integra"), and tw telecom inc. ("tw telecom") (collectively, the "Joint Commenters") hereby submit these comments in the above-referenced dockets on Sections XVII.L-R of the *ICC/USF Transformation FNPRM*.[1]

---

[1] *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011) ("*ICC/USF Transformation FNPRM*" or "*FNPRM*" or "*Order*").

I. INTRODUCTION AND SUMMARY.

In the *Order*, the Commission adopted rules governing intercarrier compensation that conform in virtually every respect to proposals submitted by incumbent LECs. The result is a new regime that favors the interests of incumbent LECs at the expense of competitive LECs. For example, the transition to bill-and-keep adopted in the *Order* effectively grants incumbent LECs a more gradual and longer transition to bill-and-keep than applies to competitive LECs. It does so by creating a Connect America Fund ("CAF") subsidy—for which competitive LECs are ineligible but to which competitive LECs must contribute—that compensates qualifying incumbent LECs for lost access revenues well past the time when competitive LECs and other carriers must adopt bill-and-keep. In addition, the regime adopted in the *Order* targets reductions to the charges—most importantly, end office terminating switching charges—that competitive LECs and incumbent LECs assess on each other in largely equal amounts, but it does not target reductions to charges—most importantly, transit and tandem switching and tandem transport charges—for which competitive LECs are significant net payers to incumbent LECs.

Given the skewed and anticompetitive effects created by the *Order*, it is critical that the Commission resolve the issues raised in the *FNPRM* in a manner that is fair and balanced between and among the categories of carriers that pay and charge for intercarrier compensation. In particular, the Commission should (1) mitigate the potential adverse effects on competitive LECs—which, again, are not entitled to CAF subsidies for recovery of lost access revenues—of moving too quickly from the existing intercarrier compensation regime; (2) allow competitors to exchange traffic with incumbent LECs in the most efficient manner possible; (3) allow competitors to assess intercarrier compensation on other carriers in the most efficient manner possible; (4) minimize opportunities for arbitrage; and (5) ensure that incumbent LECs cannot exercise their market power over transport, transit, and IP-to-IP interconnection. Consistent with these principles, the Joint Commenters make the following recommendations.

First, the Commission should not reduce originating access rates to bill-and-keep. The Commission does not have the statutory authority to reduce *intrastate* originating access rates and must leave regulation of those rates to the states. In addition, while the Commission does have jurisdiction over *interstate* originating access charges, there is no reason for the Commission to mandate originating access rate reductions because TDM originating access charges will become obsolete as carriers increase their deployment of IP networks. In all events, if the Commission reduces originating access rates, incumbent LECs should not be permitted to recover the resulting revenue losses from the access recovery mechanism ("ARM").

Second, the Commission should reduce rates for transport. More specifically, it should reduce rates for "transport" of non-access traffic, "dedicated transport," "direct-trunked transport," and "tandem-switched transport" (as well as tandem switching) where the terminating carrier owns the tandem and the end office to bill-and-keep. In addition, given incumbent LECs' bottleneck control over local transmission facilities, the Commission should address rates for local transmission services within a LATA that are not covered by the transition to bill-and-keep adopted in the *Order*. In particular, the Commission should ensure that rates for transmission from a point in a LATA to points of interconnection ("POIs") in the same LATA are effectively regulated.

Third, the Commission should clarify that incumbent LECs must provide transit service at cost-based rates. The record demonstrates that the market for transit service is not effectively competitive, and the Commission already has the authority under Sections 251(b)(5) and 201(b) of the Act to regulate rates for that service.

Fourth, the Commission should not alter its current interconnection rules or establish new network edge rules to implement the bill-and-keep methodology adopted in the *Order*. Such changes would deprive competitors of their statutory right to interconnect at any technically feasible point in the incumbent LEC network, including at a single POI per LATA. New rules governing TDM interconnection arrangements are also unnecessary as carriers transition to all-IP networks. Furthermore, as explained below, existing interconnection arrangements are sufficiently flexible to address changes resulting from the Commission's adoption of bill-and-keep.

Fifth, the Commission should continue to permit competitive LECs to tariff access charges during and after the transition to bill-and-keep. The Commission should do so because (1) it is more efficient for both competitive LECs and other carriers to assess access charges on each other via tariffs rather than via negotiated agreements; (2) the Commission's revision of its tariffing rules to address access stimulation schemes reduces competitive LECs' ability to use tariffing to perpetuate such schemes; and (3) tariffs can be used to assess access charge payment obligations in instances where one or both carriers do not have a duty to negotiate an interconnection agreement in good faith.

Additionally, the Commission should not extend the Section 251/252 interconnection agreement process adopted in the so-called *T-Mobile Order* to competitive LECs except in certain defined circumstances. The rationale underlying the Commission's decision in the *T-Mobile Order* was that LECs could only assess reciprocal compensation charges on CMRS providers via interconnection agreements, thereby making it necessary that CMRS providers become subject to a duty to negotiate interconnection agreements in good faith. But the *Order* establishes bill-and-keep as the preferred outcome for intercarrier compensation reform. It therefore makes no sense to force competitive LECs to enter into interconnection agreements for the purpose of paying the very rates that the Commission seeks to eliminate. The Commission should, however, make an exception to the rule that competitive LECs are not required to negotiate interconnection agreements under the Section 251/252 framework where a competitive LEC seeks to assess a reciprocal compensation rate pursuant to a state or federal tariff. Requiring a competitive LEC that seeks to assess a reciprocal compensation rate pursuant to a state or federal tariff to negotiate interconnection agreements in good faith is necessary to compel competitive LECs that seek to charge high reciprocal compensation rates as part of non-access stimulation schemes to negotiate lower rates.

Finally, the Commission should clarify that incumbent LECs have an enforceable duty to provide IP-to-IP interconnection pursuant to Section 251(c)(2) (and, as a consequence, the negotiation and arbitration provisions of Sections 251 and 252) of the Act. Rather than adopting its complex proposal for allocating financial responsibility for the costs of IP-to-TDM conversions or establishing detailed technical or pricing rules governing IP-to-IP interconnection at this time, the Commission should simply clarify that incumbent LECs have an enforceable statutory compulsion to provide IP-to-IP interconnection. Competitors and incumbent LECs can then address technical and other implementation issues through bilateral negotiations.

II. DISCUSSION

A. The Commission Should Not Reduce Originating Access Rates To Bill-And-Keep.

In the *FNPRM*, the Commission seeks comment on how it should transition originating access charges to bill-and-keep.[2] As a threshold matter, the Commission lacks the statutory authority to reduce *intrastate* originating access charges. Section 2(b) of the Act generally

[2] *See FNPRM* ¶¶ 1298-1299.

provides that "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with *intrastate* communication service."[3] Assuming *arguendo* that Section 251(b)(5) of the Act overrides this provision for intrastate transport and termination, it does not do so for intrastate origination because the terms of Section 251(b)(5) do not address origination.[4] Nor does any other provision of the Act grant the Commission authority to regulate intrastate originating access service.

Although the Commission recognizes that "section 251(b)(5) does not explicitly address originating charges,"[5] the Commission inexplicably suggests that this fact provides a basis for preempting the states' authority to impose intrastate originating access charges.[6] According to the Commission, because Section 251(b)(5) does not expressly address origination, charges for origination are prohibited under Section 251(b)(5) and should ultimately be eliminated.[7] The charges to be eliminated appear to include intrastate originating access charges. But Congress' silence on origination in Section 251(b)(5) cannot be construed as a grant of legal authority over origination, including intrastate origination. If the Commission wishes to override Section 2(b)

---

[3] 47 U.S.C. § 152(b) (emphasis added).

[4] *See* 47 U.S.C. § 251(b)(5) (imposing on LECs "the duty to establish reciprocal compensation arrangements for the *transport and termination* of telecommunications") (emphasis added).

[5] *FNPRM* ¶ 1298.

[6] *See id*.

[7] *See Order* n.1976 (quoting *Local Competition Order* ¶ 1042) ("[Section 251(b)(5)] does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits [such] charges . . . ."); *see also FNPRM* ¶ 1298 ("As we acknowledge in the Order, section 251(b)(5) does not explicitly address originating charges. We determine, therefore, that such charges should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime.").

and regulate intrastate originating access service, it must identify a provision that affirmatively grants it the authority to do so or prove that preemption of state regulation is necessary under the impossibility doctrine.[8] It has not done so.

In the *Order*, the Commission also suggests that Section 251(g) of the Act allows it to regulate all forms of "exchange access," including intrastate originating access service.[9] But as the Supreme Court has recognized, Section 251(g) "is not [a] grant[] of authority at all."[10] In striking down the Commission's attempt to rely on Section 251(g) as a source of authority to regulate ISP-bound traffic, the D.C. Circuit explained that "[Section 251(g)] is worded simply as a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act."[11] In order to adopt new rules governing intrastate originating access service, the Commission must rely upon an independent source of authority rather than relying upon Section 251(g) alone.

If the Commission cannot identify a provision of the Act that grants it the authority to regulate intrastate originating access service (which it cannot) or rely on the impossibility doctrine (which it has not even attempted to do), Section 2(b) of the Act makes clear that the

---

[8] *See generally La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 373-76 & n.4 (1986).

[9] *See Order* ¶ 778 ("[S]ection 251(g) provides for the continued enforcement of certain pre-1996 Act obligations pertaining to 'exchange access' until 'such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission.' Exchange access is defined to mean 'the offering of access to telephone exchange services or facilities for the purpose of the *origination* or termination of telephone toll services.' Thus, section 251(g) continues to preserve originating access until the Commission adopts rules to transition away from that system.") (emphasis in original) (internal citation omitted).

[10] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 383 & n.9 (1999).

[11] *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002). Moreover, even when the Commission interpreted Section 251(g) as a source of authority to regulate ISP-bound traffic, it did not attempt to use this provision to expand its authority over intrastate communications.

states retain jurisdiction over intrastate originating access service and may continue to impose intrastate originating access charges as appropriate. Accordingly, the treatment of intrastate originating access charges should be left to the states and the Commission should not reduce intrastate originating access charges.

While the Commission clearly has jurisdiction over *interstate* originating access charges pursuant to Sections 2(a) and 201(b) of the Act,[12] the Commission should not reduce interstate originate access charges either. Competitive LECs should be able to retain their originating access revenues as they adjust to the reductions in their terminating access revenues as a result of the *Order*. Moreover, the reforms adopted in the *Order* will ultimately make TDM originating access charges obsolete as carriers increasingly deploy IP networks. The Commission should allow the resulting reductions in competitive LECs' originating access revenues to take their course rather than mandating originating access rate reductions as part of the transition.[13]

Finally, even if the Commission does reduce originating access rates, it should not permit incumbent LECs to recover the resulting lost revenues from the ARM.[14] Permitting additional subsidies for revenue recovery would conflict with the Commission's "commitment to keeping

[12] *See* 47 U.S.C. § 152(a) ("The provisions of this chapter shall apply to all interstate and foreign communications by wire or radio . . . ."); *id.* § 201(b) ("All charges, practices, classifications, and regulations for and in connection with [interstate] communication service, shall be just and reasonable . . . .").

[13] Furthermore, if originating access charges are reduced, incumbent LECs will need to increase their end-user charges, which will in turn create pressure to increase universal service subsidies. *See also* Reply of CenturyLink, WC Dkt. Nos. 10-90 et al., at 6 (filed Feb. 21, 2012) (asserting that the *Order* "arguably already goes too far" in its negative impacts on "end users and universal service mechanisms").

[14] *See FNPRM* ¶ 1301 (seeking comment on "what, if any, recovery would be appropriate for originating access charges").

within the CAF budget."[15] Moreover, allowing incumbent LECs, but not competitive LECs, to recover lost originating access revenues would merely exacerbate an already distorted intercarrier compensation regime. And, to add insult to injury, competitive LECs and their customers would be required to help pay for the additional subsidies to incumbent LECs in the form of universal service contributions—contributions which have reached a record high of 17.9 percent of interstate telecommunications revenues.[16]

B. The Commission Should Reduce Transport Rates To Bill-And-Keep And Address Rates For Local Transmission Services Not Covered By The Transition.

The transition adopted in the *Order* addresses rates for terminating end-office switching, but it does not fully address rates for transport.[17] In so doing, the *Order* disadvantages competitive LECs. That is, the *Order* "reforms rates for the 'termination' function that incumbents *buy* from competitors but does not reform rates for the 'transport' function incumbents *sell* to competitors."[18] The Commission should therefore reduce rates for transport. More specifically, the Commission should reduce rates for "transport" of non-access traffic as

---

[15] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Order on Reconsideration, FCC 11-189, n.22 (2011) ("*ICC/USF Reconsideration Order*").

[16] *See Proposed First Quarter 2012 Universal Service Contribution Factor*, CC Dkt. No. 96-45, Public Notice, DA 11-2020 (rel. Dec. 14, 2011).

[17] *See FNPRM* ¶ 1297 ("Although we specify the implementation of the transition for certain terminating access rates in the Order, we did not do the same for other rate elements, including . . . dedicated transport [and] tandem switching and tandem transport in some circumstances . . . .").

[18] *See* EarthLink Comments, WC Dkt. Nos. 10-90 et al., at 25 (filed Aug. 24, 2011) (emphasis in original).

defined in Rule 51.701(c),[19] "dedicated transport" from the serving wire center to the tandem,[20] "direct-trunked transport" from the serving wire center to the end office,[21] and "tandem-switched transport"[22] (as well as tandem switching) where the terminating carrier owns the tandem and the end office) to bill-and-keep. Reduction of these rates is consistent with the logic underlying the Commission's adoption of bill-and-keep as the endpoint for reform (i.e., that the Commission should reduce rates for transport where carriers can recover their costs through end-user charges).[23] In particular, the Commission should subject per-minute charges for these transport elements to the same reductions that apply to terminating end-office switching, and it should subject flat-rated charges for these transport elements to annual lock-step reductions to bill-and-keep. For the same reasons discussed in Part II.A above, however, the Commission should not permit incumbent LECs to recover lost transport revenues from the ARM.

---

[19] *See* 47 C.F.R. § 51.701(c) (defining "transport" as the 'transmission and any necessary tandem switching of Non-Access Telecommunications Traffic . . . from the interconnection point between two carriers to the terminating carrier's end office switch that directly serves the called party"). Transport of non-access traffic must be cost-based (*see* 47 C.F.R. § 51.709(a)) and where the transport trunks are two-way trunks, "the interconnecting carrier shall pay the providing carrier a rate that reflects only the proportion of the trunk capacity that the interconnecting carrier uses to send terminating traffic to the providing carrier." *See Local Competition Order* ¶ 1062; *see also* 47 C.F.R. § 51.709(b) (providing that "[t]he rate of a carrier providing transmission facilities dedicated to the transmission of non-access traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send non-access traffic that will terminate on the providing carrier's network").

[20] *See Order*, Figure 13.

[21] *See id.*

[22] *See id.*

[23] *See id.* ¶¶ 742, 745. The Joint Commenters support reduction of transport rates to bill-and-keep (i.e., a target rate of zero) only to the extent that the Commission's adoption of bill-and-keep as the endpoint for reform is upheld by the Tenth Circuit Court of Appeals.

In light of incumbent LECs' pervasive bottleneck control over local transmission facilities, the Commission should also address rates for local transmission services within a LATA that are not covered by the transition to bill-and-keep adopted in the *Order*. For example, a competitive LEC may need to purchase a dedicated transmission facility or transit service from an incumbent LEC in order to transmit traffic between one location in a LATA and a POI located in the same LATA. The Commission should ensure that rates for these transmission services are effectively regulated. For example, dedicated interconnection trunks are interconnection facilities under Section 251(c)(2) of the Act and should continue to be provided at cost-based rates pursuant to Section 252(d)(1) of the Act.[24] In addition, as discussed below, the Commission should require that transit service be provided at cost-based rates. Effective regulation of rates for transmission to POIs is especially important in the event that the Commission allows incumbent LECs to force competitive LECs to interconnect at multiple POIs per LATA rather than a single POI per LATA.

C. The Commission Should Clarify That Incumbent LECs Must Provide Transit Service At Cost-Based Rates.

In the *FNPRM*, the Commission seeks comment yet again on whether and if so, how, it should regulate transit service.[25] In particular, the Commission asks whether "the transit market demonstrates the hallmarks of a competitive market[.]"[26] The answer is no.

---

[24] *See* 47 U.S.C. §§ 251(c)(2) & 252(d)(1)(A)(i). In addition, if the interconnection trunks are two-way, shared trunks, the cost of the trunks must be shared by the interconnecting carriers. *See* 47 C.F.R. § 51.507(c) (providing that "[t]he costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users").

[25] *See FNPRM* ¶ 1313 (soliciting comment on "the need for regulatory involvement" with respect to transit service); *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554, ¶ 683 (2011) ("*ICC/USF Transformation*

Incumbent LECs have market power over the provision of transit service for a significant portion of the local traffic exchanged among LECs. As the Joint Commenters have explained in detail in this proceeding, the incumbent LECs' market power in the provision of transit service is the result of several different factors. *First*, unlike incumbent LECs' networks, alternative transit providers' networks are not ubiquitous.[27] There are therefore a substantial number of local routes on which the incumbent LEC is the only provider of transit service. *Second*, incumbent LECs have used various strategies to reduce the size of the addressable market for alternative transit providers and to force competitive LECs to continue to buy transit service from the incumbent LEC for the traffic at issue.[28] *Third*, there are costs associated with relying on an alternative transit provider that further reduce the circumstances in which a LEC can rely on an alternative provider of transit service.[29]

NPRM") ("invit[ing] parties to refresh the record with regard to the need for the Commission to regulate transiting service").

[26] *FNPRM* ¶ 1313.

[27] *See* Letter from Thomas Jones, Counsel for Cbeyond et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al., at 2-3 (filed July 29, 2011) ("Cbeyond et al. July 29, 2011 Letter") (explaining that, as a consequence, Cbeyond must still use the incumbent LEC's transit service in every market in which it operates).

[28] *See, e.g.*, Cbeyond et al. July 29, 2011 Letter at 3 & n.10 (explaining that when an Integra customer calls the customer of any competitive LEC (including another Integra customer) that is served by legacy Qwest's "QLSP" UNE-P replacement product, Qwest requires Integra to use Qwest for transit of that traffic); *see also id*. at 3-4 (explaining that, according to Peerless Network (an alternative transit provider), in many markets in the AT&T incumbent LEC territory, AT&T's long distance and wireless affiliates have refused to interconnect with Peerless and instead, "AT&T will deliver traffic to other carriers from any of its affiliates . . . only through interconnection[] to AT&T incumbent LEC tandems") (quoting Petition to Deny of Peerless Network, Inc., WT Dkt. No. 11-65, at 7 (filed May 31, 2011)).

[29] *See, e.g.*, Cbeyond et al. July 29, 2011 Letter at 4-5; *see also* Letter from Thomas Jones, Counsel for Cbeyond et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al., at 2 (filed Oct. 20, 2011) (explaining that in certain markets, Cbeyond is forced to rely on the incumbent LEC for all of its transit needs because (1) Cbeyond has insufficient traffic to justify

As a result of their market power, incumbent LECs can and do unilaterally set prices for transit service well above cost and above the level that a competitive market would yield.[30] For example, legacy Qwest offers competitive LECs transit service at a rate of $0.0045, which is more than three times Qwest's average TELRIC rate for transit service,[31] and in the legacy BellSouth territory, AT&T offers competitive LECs transit service at a rate of $0.0025, which is almost two-and-a-half times legacy BellSouth's average TELRIC rate for transit service.[32]

For these reasons, the Commission should clarify that incumbent LECs have a duty to provide transit service and that such service must be provided at cost-based rates. The Commission has already held that all LECs have "a duty to route and terminate traffic"[33] under Section 251(b)(5) of the Act.[34] Thus, incumbent LECs have the duty under Section 251(b)(5) to route (or to "transport" in the parlance of Section 251(b)(5) and the Commission's rules)

---

deployment of trunks between its switch and the alternative transit provider's switch; and/or (2) the costs of maintaining a redundant transit arrangement with an alternative transit provider—even if that provider charges a lower rate than the incumbent LEC—are too high).

[30] *See* Reply Comments of Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc., WC Dkt. Nos. 10-90 et al., at 17 (filed May 23, 2011) ("Cbeyond et al. May 23, 2011 Reply Comments"); *see also* Comments of Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc., WC Dkt. Nos. 10-90 et al., at 20 (filed Apr. 18, 2011) ("Cbeyond et al. April 18, 2011 Comments").

[31] *See* Cbeyond et al. April 18, 2011 Comments at 20 & Attachment B, Declaration of Douglas K. Denney on behalf of Integra Telecom, Inc., ¶¶ 4-5.

[32] *See* Cbeyond et al. April 18, 2011 Comments at 20 & Attachment A, Declaration of Greg Darnell on behalf of Cbeyond, Inc., ¶¶ 4-5.

[33] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and CMRS Providers*, First Report and Order, 11 FCC Rcd. 15499, ¶ 176 (1996) ("*Local Competition Order*") (subsequent history omitted) ("We also reject CompTel's argument that reading section 251(c)(2) to refer only to physical linking of networks implies that incumbent LECs would not have a duty to route and terminate traffic. That duty applies to all LECs and is clearly expressed in section 251(b)(5).").

[34] *See* 47 U.S.C. § 251(b)(5) (imposing on LECs the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications").

telecommunications traffic, including traffic between carriers that lack direct interconnection. Moreover, the Commission can rely on Section 251(b)(5) to exercise jurisdiction over rates for transit service because that service involves the "transport" of telecommunications, as that term is defined in the Commission's rules.[35] The Commission can also rely on its rulemaking authority under Section 201(b) of the Act[36] to interpret the term "compensation" in Section 251(b)(5) to established TELRIC-based pricing for the compensation paid to incumbent LECs for transit service.[37]

D. The Commission Should Reaffirm Competitive LECs' Right To Interconnect At A Single POI Per LATA And The Commission Should Not Modify Its Interconnection Architecture Rules.

In the *FNPRM*, the Commission seeks comment on "any interconnection and related issues that must be addressed to implement bill-and-keep in an efficient and equitable manner."[38] More specifically, the Commission asks (1) whether it needs to "provide new or revised POI

---

[35] *See* 47 C.F.R. § 51.701(c) (defining "transport" as the 'transmission and any necessary tandem switching of Non-Access Telecommunications Traffic . . . from the interconnection point between two carriers to the terminating carrier's end office switch that directly serves the called party").

[36] *See* 47 U.S.C. § 201(b).

[37] Notably, cost-based pricing for transit service does not deter competitive entry. For example, Neutral Tandem, an alternative transit provider, entered the Phoenix market after Qwest had been offering competitive LECs in Arizona transit service at cost-based rates. *See* PRNewswire, *Neutral Tandem Announces Major Expansion of Nationwide Tandem Network* (Nov. 13, 2006), *available at* http://www.prnewswire.com/news-releases/neutral-tandem-announces-major-expansion-of-nationwide-tandem-network-56288437.html (announcing future plans to expand to Phoenix); *see also* Qwest Arizona SGAT Fourteenth Revision, Exhibit A, § 7.9.1 (amended Feb. 10, 2005), *available at* http://qwest.centurylink.com/about/policy/sgats/SGATSdocs/arizona/AZ_14th_Rev_3rd_Amend_Exh_A_2_10_05_Clean.pdf (basing local transit service rates on cost-based tandem switching and tandem transmission rates).

[38] *FNPRM* ¶ 1315.

rules"[39] or "prescribe POIs under a bill-and-keep methodology,"[40] and (2) how it should "defin[e] an appropriate network edge" such that "a carrier is responsible for carrying, directly or indirectly by paying another provider, its traffic to th[e] edge."[41] The Commission should not alter its current interconnection rules or establish a network edge for several reasons.

First, establishing a so-called network edge as the point at which carriers have the right to interconnect would deprive competitive LECs of their statutory right to interconnect "at any technically feasible point,"[42] including at a single POI per LATA.[43] As the Commission has held, the "interconnection obligation of section 251(c)(2) . . . allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs" (and "thereby lower[] the competing carriers' costs of, among other things, transport and termination of traffic"), "rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points."[44] Where a competitive LEC can exchange all traffic with an incumbent LEC at a single POI, it can achieve network efficiencies that "help reduce network costs, and in

---

[39] *Id.* ¶ 1316.

[40] *Id.* ¶ 1318.

[41] *Id.* ¶ 1320; *see also ICC/USF Transformation NPRM* ¶ 680 ("This [network edge] approach requires that the calling party's service provider transmit, route and otherwise perform all the network functions necessary to deliver traffic to the network edge of the called party's service provider.").

[42] *See* 47 U.S.C. § 251(c)(2)(B).

[43] *See Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas,* Memorandum Opinion and Order, 15 FCC Rcd. 18354, ¶ 78 (2000) ("Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.").

[44] *Local Competition Order* ¶¶ 172, 209.

turn, free capital and other resources for the competitive provider[] to implement competing voice, broadband or other advances services."[45] By contrast, when a competitive LEC is forced to interconnect at multiple POIs, transport costs increase and network efficiencies are reduced.[46] Thus, rather than prescribing POIs or creating a network edge, the Commission should simply reaffirm competitors' statutory right to interconnect at any technically feasible point, including at a singe POI per LATA.

Second, existing interconnection arrangements will ultimately be replaced by IP interconnection arrangements. It is therefore unnecessary for the Commission to establish new rules that would alter existing TDM interconnection arrangements—arrangements which are well-established and are the result of more than a decade of negotiations and arbitrations between incumbents and competitors.

Third, existing interconnection arrangements and network engineering practices are flexible enough to address changes resulting from the adoption of bill-and-keep. For example, under these arrangements, a competitive LEC will often interconnect at the incumbent LEC tandem but the incumbent LEC will establish a dedicated transmission facility, that bypasses the tandem switching functionality, between its interconnection point at the tandem and the incumbent LEC end office in those cases where traffic volumes justify such connections. As intercarrier compensation rates decrease and carriers increasingly transition to all-IP networks and IP interconnection, however, the amount of traffic transmitted directly to and switched by the incumbent LEC end office will likely decrease. Under current network engineering practices, where the traffic volumes associated with an end office diminish sufficiently and it is

---

[45] *See* Comments of Charter Communications, Inc., WC Dkt. Nos. 10-90 et al., at 4 (filed Apr. 18, 2011).

[46] *See id*.

economically efficient, the incumbent LEC can simply return to a higher level of traffic aggregation for switching and routing traffic (e.g., the local and/or access tandem switch locations). Such practices will also allow the terminating carrier (in this case, the incumbent LEC) to maximize efficiencies. There is therefore no need for the Commission to establish new interconnection rules to accommodate changes resulting from the adoption of bill-and-keep.

E. The Commission Should Continue To Permit Competitive LECs To Tariff Access Charges.

In the *FNPRM*, the Commission seeks comment on its view, that although it is "maintain[ing] a role for tariffing as part of the transition, . . . reliance on interconnection agreements is most consistent with this Order's application of reciprocal compensation duties to all carriers."[47] More specifically, the Commission asks "whether even the transitional role for tariffing should be replaced, with carriers relying solely on interconnection agreements."[48]

Notwithstanding its preference for negotiated agreements over tariffing of the default transitional rates established in the *Order*, the Commission should continue to permit competitive LECs to tariff access charges both during and after the transition to bill-and-keep. The Commission should do so for several reasons. *First*, tariffing of access charges generally yields significant efficiencies. In particular, it reduces transaction costs by eliminating the need for a competitive LEC to devote substantial time and resources to negotiating countless individual agreements with countless different carriers (and in so doing, it lowers barriers to competitive entry into the market). As a general matter, it is also efficient for other carriers to assess access charges on competitive LECs via tariffs rather than via negotiated agreements.

---

[47] *FNPRM* ¶ 1323.

[48] *See Order* ¶ 828 (citing Section XVII.N of *FNPRM*).

Second, by revising its tariffing rules to address access stimulation schemes,[49] the Commission has reduced competitive LECs' ability to tariff high interstate switched access charges and perpetuate such schemes. *Third*, tariffs can be used to impose access charge payment obligations in instances where one or both carriers do not have a duty to negotiate an interconnection agreement in good faith. Accordingly, competitive LECs should continue to have the right to tariff access charges.

The Commission also seeks comment on whether it should extend the duty to negotiate interconnection agreements under the framework of Sections 251 and 252 of the Act to all telecommunications carriers, including competitive LECs.[50] The Commission imposed this duty on CMRS providers in the 2005 *T-Mobile Order*[51] and rural incumbent LECs have urged the Commission to "extend the *T-Mobile Order* to give ILECs the right to demand interconnection negotiations with all carriers,"[52] including all competitive LECs. The Commissions should reject this proposal.

In the *T-Mobile Order*, the Commission found that LECs had been having "difficulty obtaining compensation from CMRS providers" for termination of non-access CMRS traffic in part because CMRS providers were not subject to the duty to negotiate reciprocal compensation arrangements under Section 251(b)(5) and therefore, "the Commission's rules impose[d] certain

---

[49] *See id.* ¶¶ 656-701 (requiring LECs engaging in access stimulation to reduce their interstate switched access tariffed rates).

[50] *See FNPRM* ¶ 1324; *see also Order* ¶ 845.

[51] *See generally Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd. 4855 (2005) ("*T-Mobile Order*").

[52] *Order* ¶ 845.

obligations on LECs, but not on CMRS providers."[53] In addition, "although CMRS providers may indeed have [had] an existing legal obligation to compensate LECs for the termination of wireless traffic under [the Commission's rules], . . . the rules fail[ed] to specify the mechanism by which LECs may obtain this compensation."[54] But in the *Order*, the Commission established a regime for *eliminating* intercarrier compensation. Thus, the underlying objective of the *T-Mobile Order*, to ensure payment of new intercarrier compensation arrangements where none have existed, no longer applies. Other than in the circumstance described below, it would make no sense to force competitive LECs to enter into interconnection agreements for the purpose of paying the very rates that the Commission now seeks to eliminate.

The Commission should, however, make an exception where a competitive LEC seeks to charge reciprocal compensation rates pursuant to a state or federal tariff or equivalent mechanisms such as binding price lists. This exception is necessary to compel competitive LECs that seek to charge high tariffed reciprocal compensation rates as part of non-access stimulation schemes to negotiate lower rates. As Integra has explained in this proceeding, rather than entering into interconnection agreements for reciprocal compensation with Integra, North County Communications has filed unilateral state tariffs and price lists purporting to govern the termination of non-access traffic and then directed high volumes of traffic to a chat-line company that it serves.[55] Unfortunately, the Commission did not address non-access traffic stimulation

[53] *See T-Mobile Order* ¶ 15 & n.60.

[54] *Id.* n.61; *see also id.* ¶ 10 (finding that "the existing compensation rules are silent as to the type of arrangement necessary to trigger payment obligations" on the part of CMRS providers to LECs for the termination of non-access CMRS traffic).

[55] *See* Comments of Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc., WC Dkt. Nos. 10-90 et al., at 16-17 (filed Apr. 1, 2011) ("Cbeyond et al. April 1, 2011 Initial Comments").

schemes in the *Order*.[56] A requirement that compels competitive LECs that seek to charge a reciprocal compensation pursuant to tariffs or equivalent mechanisms for the exchange of non-access traffic to negotiate an interconnection agreement pursuant to Sections 251 and 252 would help address non-access stimulation by bad actors such as North County.

F. The Commission Should Clarify That Incumbent LECs Have An Enforceable Statutory Duty To Provide IP-to-IP Interconnection.

In the *Order*, the Commission held that it "expect[s] all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic," and that it "expect[s] such good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic."[57] In the *FNPRM*, the Commission seeks comment on the specific statutory basis for, and standards for enforcement of, this good faith negotiation requirement,[58] as well as the specific statutory authority "for the Commission to adopt a policy framework governing IP-to-IP interconnection" more generally.[59] The Commission also asks numerous detailed questions about the pricing of IP-to-IP interconnection and traffic exchange,[60] the need to address "the number and/or location of physical POIs" in the context of IP-to-IP interconnection,[61] and "alternative" policy approaches[62] such as allocating

---

[56] As explained above, given that the Commission has addressed access stimulation schemes, it makes sense to permit carriers to continue to tariff access charges. A different approach is required for non-access traffic because the Commission did not adopt rules to address non-access traffic stimulation schemes.

[57] *Order* ¶ 1011; *see also FNPRM* ¶ 1341.

[58] *See FNPRM* ¶¶ 1351-1358.

[59] *See id.* ¶ 1380; *see also id*. ¶¶ 1381-1398.

[60] *See id.* ¶ 1368.

[61] *See id.* ¶¶ 1366-1367.

"responsibility for the costs of IP-to-TDM conversions"[63] or "leav[ing] IP-to-IP interconnection largely unregulated by the Commission."[64] As discussed herein, the Commission should focus on clarifying that LECs have an enforceable statutory duty to provide IP-to-IP interconnection and it should not adopt detailed pricing or technical rules governing IP-to-IP interconnection at this time. Nor should the Commission adopt the aforementioned "alternative" approaches to IP-to-IP interconnection discussed in the *FNPRM*.

The Commission should impose on incumbent LECs the obligation to establish IP-to-IP interconnection for the purpose of exchanging all facilities-based voice traffic (both IP and TDM) pursuant to Section 251(c)(2) of the Act.[65] That provision requires that incumbent LECs provide interconnection to "*any requesting telecommunications carrier*" at any technically feasible point "*for the transmission and routing of telephone exchange service or exchange*

---

[62] *Id.* ¶ 1360.

[63] *Id.* ¶ 1361.

[64] *Id.* ¶ 1375; *see also id.* ¶¶ 1376-1377.

[65] The Commission could also impose the duty to provide IP-to-IP interconnection on competitive LECs pursuant to Section 251(a) of the Act. *See* 47 U.S.C. § 251(a) (providing that each telecommunications carrier has the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers"). The Section 251(a) duty can only be triggered by "telecommunications carriers," which are defined in the Act as "provider[s] of telecommunications services." *See* 47 U.S.C. § 153(51). Accordingly, the most straightforward way for the Commission to require competitive LECs to provide IP-to-IP interconnection for facilities-based VoIP traffic under Section 251(a) is by classifying facilities-based VoIP services as "telecommunications services." *See id.* § 153(53) (defining "telecommunications service" as "the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used"); *see also id*. § 153(50) (defining "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received"). As the Joint Commenters have demonstrated, facilities-based VoIP services meet the statutory definition of "telecommunications services." *See* note 71 *infra*.

access."[66] The Commission can rely on this statutory provision to require incumbent LECs to provide IP-to-IP interconnection at any technically feasible point for the transmission and routing of facilities-based voice services, whether those services are originated in TDM or IP. More specifically, the facilities-based voice services covered by the Section 251(c)(2) duty to provide IP-to-IP interconnection should include: (1) voice services that originate and terminate in TDM but are transported in IP (known as "IP-in-the-middle" services); (2) voice services that originate in TDM and terminate in IP; and (3) "facilities-based VoIP" services.[67] *First*, "IP-in-the-middle" services are telecommunications services[68] and transmit underlying TDM-based telephone services that are unquestionably telephone exchange services or exchange access.[69] *Second*,

[66] 47 U.S.C. § 251(c)(2) (emphasis added); *see also id.* § 153(54) (defining "telephone exchange service as "(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange access charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service"); *id.* § 153(20) (defining "exchange access" as "the offering of access to telephone exchange services or facilities for purposes of the origination or termination of telephone toll services").

[67] The Joint Commenters use the term "facilities-based VoIP" service consistently with the Commission's usage of that term. *See, e.g.*, *The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, Notice of Proposed Rulemaking, 26 FCC Rcd. 7166, n.66 (2011) ("Facilities-based interconnected VoIP service providers own and operate the broadband access communications infrastructure required to deliver VoIP services. . . . Unlike Vonage or several other non-facilities-based VoIP services, facilities-based VoIP is not an application that is issued 'over-the-top' of a high-speed Internet access service purchased by a consumer. Significantly, facilities-based VoIP customers do not need to subscribe to broadband Internet service, and their providers do not route their respective traffic over the public Internet. Rather, the facilities-based VoIP service is based on specifications that typically involve the use of a managed IP network.").

[68] *See generally Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd. 7457 (2004).

[69] *See* Petition for Declaratory Ruling That tw telecom inc. Has The Right To Direct IP-to-IP Interconnection Pursuant To Section 251(c)(2) Of The Communications Act, As Amended, For

TDM-based telephone services are undoubtedly telecommunications services and also telephone exchange services or exchange access regardless of whether they are terminated in IP.[70] *Third*, as the Joint Commenters have explained in detail in this and other proceedings, facilities-based VoIP services qualify as telecommunications services[71] and as telephone exchange services or exchange access.[72] Thus, incumbent LECs have a duty under Section 251(c)(2) to provide IP-to-IP interconnection to requesting telecommunications carriers at any technically feasible point for the transmission and routing of these three categories of facilities-based voice services. Indeed, as the Commission recognizes, Section 251's "interconnection requirements are technology neutral [and] they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks."[73]

The Transmission And Routing Of tw telecom's Facilities-Based VoIP Services And IP-In-The-Middle Voice Services, WC Dkt. No. 11-119, at 4 (filed June 30, 2011) ("tw telecom IP-to-IP Interconnection Petition").

[70] Even if TDM-based telephone traffic is terminated in IP, the Section 251(c)(2) interconnection duty is triggered based on the service that the requesting carrier is providing. *See Local Competition Order* ¶ 191 (holding that IXCs are entitled to interconnection under Section 251(c)(2) *only* "for the provision of telephone exchange service and exchange access to others").

[71] *See* Cbeyond et al. April 1, 2011 Initial Comments at 9-15 (explaining that facilities-based VoIP service should be classified as "telecommunications services" because, among other things, they offer end users the same functionality—voice transmission—as traditional, TDM-based telephone service); *see also* tw telecom IP-to-IP Interconnection Petition at 9-12 (explaining how tw telecom's facilities-based VoIP services meet the statutory definition of "telecommunications services").

[72] *See* Cbeyond et al. May 23, 2011 Reply Comments at 8 (explaining that facilities-based VoIP services are comparable to traditional local telephone service and therefore qualify as "telephone exchange services" as defined in the Act); *id*. at 9 (explaining how facilities-based VoIP services qualify as "exchange access" under the Act); *see also* tw telecom IP-to-IP Interconnection Petition at 15-20 (explaining how tw telecom's facilities-based VoIP services fall squarely within the statutory definitions of "telephone exchange service" and "exchange access").

[73] *FNPRM* ¶ 1342.

It follows that incumbent LECs that receive requests for IP-to-IP interconnection are also subject to the negotiation and arbitration provisions of Sections 251 and 252 of the Act. As the Commission explains in the *FNPRM*, "when section 251(c)(2) applies, it is subject to a statutory requirement of good faith negotiations under section 251(c)(1), with enforcement available through state arbitrations under section 252."[74] Moreover, as the Commission observes, it "already has adopted guidance for evaluating claimed breaches of good faith negotiations under section 251(c)(1)"[75] and there is no reason why the Commission should not apply those implementing rules in the context of IP-to-IP interconnection agreement negotiations.

Consistent with the pricing standards of Section 252(d)(1), the Commission should require incumbent LECs to provide IP interconnection arrangements at cost-based rates.[76] To the extent that there are disputes as to whether rates are cost-based, state commissions can arbitrate such disputes pursuant to Section 252.[77] In addition, the Commission should include in the duty to negotiate IP-to-IP interconnection agreements in good faith a commitment to pay reasonable compensation for the exchange of traffic in IP. After all, a refusal to pay the other party reasonable compensation is obviously a breach of the duty to negotiate an agreement in good faith. The Commission need not adopt more specific rules governing intercarrier compensation for traffic exchange in IP until carriers gain more experience in obtaining and operating under IP-to-IP interconnection arrangements.

---

[74] *Id.* ¶ 1353.

[75] *Id.* ¶ 1353; *see also* 47 C.F.R. § 51.301(c).

[76] *See* 47 U.S.C. § 252(d)(1)(A)(i).

[77] *See id*. § 252 (setting forth arbitration procedures and standards).

Moreover, the Commission should not mandate the "location of physical [IP] POIs"[78] or adopt other detailed technical rules governing IP-to-IP interconnection arrangements at this time. As tw telecom has previously explained, there are numerous details that must be resolved between facilities-based voice providers that establish IP-to-IP interconnection.[79] The Commission should allow such details to be addressed in bilateral negotiations between incumbent LECs and competitors. Again, to the extent that there are disputes (e.g., as to whether interconnection at a particular point in the incumbent LEC IP network is technically feasible), state commissions can arbitrate such disputes under Section 252 of the Act.

Furthermore, the Commission should not adopt two of the "alternative policy frameworks" for IP-to-IP interconnection discussed in the *FNPRM*.[80] *First*, the Commission should not adopt its proposal to require a carrier that has deployed an IP network, receives a request to interconnect in IP, and chooses to interconnect in TDM (either directly or indirectly) to pay the costs of conversion from IP to TDM.[81] This proposal raises numerous, highly complex implementation challenges. As the Commission suggests, the regulator would need to determine, among other things, (1) "what specific functions the carrier electing TDM interconnection should be financially responsible for under such a requirement";[82] (2) whether financial responsibility should be extended to costs such as "any potentially increased costs from interconnecting in many locations with smaller-capacity connections rather than (potentially) less

---

[78] *FNPRM* ¶ 1367.

[79] *See* tw telecom IP-to-IP Interconnection Petition at 21 & Attachment A, Declaration of Michael E. McNamara on behalf of tw telecom inc., ¶ 10 (June 28, 2011).

[80] *See FNPRM* ¶¶ 1361-1364, 1375-1377.

[81] *Id.* ¶ 1361.

[82] *Id.*

expensive interconnection in a small number of locations with higher-capacity connections";[83] (3) whether "the ability of the carrier electing TDM interconnection to self-deploy the IP-to-TDM conversion technology or purchase it from a third party rather than paying the other provider [should] constrain the rate the other provider could charge for such functionality";[84] (4) "how the [C]omission [should] ensure that any requirements it adopted addressing financial responsibility for IP-to-TDM conversions" do not affect "some pairs of carriers with IP networks that interconnect directly or indirectly in TDM today [that might] choose to continue interconnecting in TDM";[85] and (5) whether "the carrier seeking to retain TDM interconnection [should] be permitted to choose to purchase the conversion service from any available third party providers of IP-to-TDM conversions, rather than from the carrier seeking IP-to-IP interconnection."[86] Rather than adopting an elaborate set of rules to address all of these complex issues, the Commission should focus on clarifying that incumbent LECs have an enforceable statutory compulsion to provide IP-to-IP interconnection. Indeed, given that competitive LECs and incumbent LECs have had little, if any, experience with interconnecting with each other in IP,[87] such implementation rules may prove to be unworkable.

---

[83] *Id.*

[84] *Id.* ¶ 1362.

[85] *Id.* ¶ 1363.

[86] *Id.* ¶ 1364.

[87] In fact, as numerous commenters have discussed, incumbent LECs are refusing to provide IP-to-IP interconnection. *See* Reply Comments of tw telecom inc., Integra Telecom, Inc., and Cbeyond, Inc., WC Dkt. No. 11-119, at 8 & n.13 (filed Aug. 30, 2011) ("tw telecom et al. August 30, 2011 Reply Comments").

Second, the Commission should reject AT&T's and Verizon's proposals that it "leave IP-to-IP interconnection to unregulated commercial agreements."[88] Market forces alone will not result in negotiated IP-to-IP interconnection agreements because incumbent LECs have no rational incentive to interconnect with competitors.[89] While the *Order* does to some extent "eliminate[] disincentives to IP-to-IP interconnection arising from intercarrier compensation rules,"[90] it does not eliminate incumbent LECs' disincentives to interconnect (whether in IP or TDM) arising from network effects.[91] In fact, as the Joint Commenters have explained in detail, incumbent LECs' continued market dominance and increased bargaining power as a result of RBOC consolidation make Section 251(c)(2) interconnection obligations just as necessary today as they were in 1996.[92]

Finally, although AT&T and Verizon assert that IP-to-IP interconnection obligations are unnecessary because Internet peering arrangements have developed without regulation,[93] the Joint Commenters have already explained that interconnection for the exchange of facilities-

---

[88] *FNPRM* ¶ 1343; *see also id*. ¶¶ 1375-1377.

[89] *See* tw telecom et al. August 30, 2011 Reply Comments at 35 (explaining that because incumbent LECs have many more end-user customers than competitors, competitors need to interconnect with incumbent LECs much more than incumbent LECs need to interconnect with competitors); *see also Local Competition Order* ¶ 10 (describing incumbent LECs' incentive to refuse to interconnect with competitors).

[90] *FNPRM* ¶ 1376.

[91] *See* note 89 *supra*.

[92] *See* tw telecom et al. August 30, 2011 Reply Comments at 35-36. For example, according to the Commission's most recent data, incumbent LECs still have a 65 percent share of the wireline retail local telephone service market for both residential and business customers. *See* Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2010*, Figure 3 (rel. Oct. 2011).

[93] *See FNPRM* ¶ 1377.

based VoIP traffic is distinguishable from the exchange of "best efforts" public Internet traffic.[94] Thus, "'the tremendously successful example of [] Internet'" traffic exchange[95] is irrelevant.

III. CONCLUSION.

For the foregoing reasons, the Commission should take the actions recommended herein by the Joint Commenters.

[94] *See* tw telecom et al. August 30, 2011 Reply Comments at 35.

[95] *See FNPRM* ¶ 1377 (citing Verizon April 18, 2011 Comments at 16).

Respectfully submitted,

/s/ William H. Weber
William H. Weber
General Counsel
Cbeyond, Inc.
320 Interstate North Parkway, SE
Atlanta, GA 30339
(678) 370-2327

/s/ Christopher Murray
Christopher Murray
Senior Vice President of Public Policy
EarthLink, Inc.
1375 Peachtree Street
Atlanta, GA 30309
(404) 815-0770

/s/ Karen L. Clauson
Karen L. Clauson
General Counsel, Senior Vice President
Integra Telecom, Inc.
6160 Golden Hills Drive
Golden Valley, MN 55416-1020
(763) 745-8461

/s/ Don Shepheard
Don Shepheard
Vice President, Federal Regulatory Affairs
tw telecom inc.
228 Blanchard Road
Braintree, VT 05060
(802) 728-5489

February 24, 2012